

THE FLORIDA SUPREME COURT

S.Ct. 01-2078

INQUIRY CONCERNING A JUDGE:

HON. ROBERT H. BONANNO

**FJQC'S RESPONSE TO THE ATTORNEYS GENERAL'S MOTION TO REMAND FILED
ON BEHALF OF STATE ATTORNEY JERRY HILL**

The Florida Judicial Qualifications Commission, ("FJQC") by and through undersigned counsel, hereby responds to State Attorney Jerry Hill's "Motion to Remand" and states as follows:

1. The FJQC was created by the Florida Constitution, article V, §12 in 1966. Its function is to investigate and recommend to the Florida Supreme Court the removal of any judge whose conduct demonstrates present unfitness to hold office or to recommend appropriate discipline, where warranted.

2. Fla. Constitution, Article V, section 12(a)(5) expressly provides that:

The Commission **shall** have access to all information from all executive, legislative and judicial agencies, **including grand juries, subject to the Rules of the Commission.** At any time, on request of the speaker of the house of representatives or the governor, the commission **shall make available** all information in the possession of the commission for use in consideration of impeachment or suspension, respectively. (emphasis added).

This Constitutional provision uses mandatory language.

3. FJQC Rule 6(e) similarly states that the FJQC "**shall** have

access to all information from all executive, legislative and judicial agencies, **including grand juries ...**" (Emphasis added). It is likewise mandatory in its terms. FJQC Rule 2(9).

4. On December 8, 2000, a grand jury investigating judicial misconduct in Hillsborough County issued its presentment, calling *inter alia* for the removal of Judge Bonanno from office. That report remained sealed, in pertinent part, while Judge Bonanno pursued an appeal. Bonanno v. Investigation into Judicial Misconduct, 2nd DCA Case No. 2D01-562. Judge Bonanno dropped his appeal and the grand jury's report was released by Court order on June 19th, 2001.

5. While the grand jury proceedings were pending, FJQC received access to certain limited grand jury testimony concerning Judge Bonanno, by agreed order, issued by Judge Schaeffer, the judge presiding over the grand jury. The motion and order were issued under seal, and the order **required** the FJQC to maintain confidentiality for the materials. The motion and order are currently before this Court under seal.

6. After the State Attorney refused to waive privilege for the grand jury testimony, the FJQC filed formal charges against Judge Bonanno and entered into a stipulation with the Judge based upon the evidence it had and was permitted to use. The FJQC issued a report and a recommendation for a public reprimand. That report and recommendation is currently before this Court for further

action. The FJQC is required to submit a record to the Court to support its report and recommendation. See In re Judge Fletcher, 664 So. 2d 934 (Fla. 1995). In conformance with this requirement, the FJQC has submitted the evidence it had available to use. It has **also** submitted the evidence from the grand jury that it had available, but was not permitted to use, for the Court's review.

7. Immediately following the filing of the FJQC's report and recommendation, the State Attorney began to issue a series of public statements, criticizing the FJQC for failure to do its job, and failure to recognize the grand jury's findings. Focusing on the grand jury's report, **which is not itself evidence**, but conclusions, the State Attorney faulted the Commission's analysis as "too narrow" and one which "absolutely failed to restore confidence in the judiciary." (App. "A"). The State Attorney actually forwarded correspondence to the Court (without service on the undersigned) enclosing the grand jury's report, while simultaneously objecting to the release and use of the testimony the FJQC would need, if required to do more.

8. This Court has **exclusive** jurisdiction over the FJQC and its proceedings. Fla. Const. art. V, section 2 & 12(c). In fact, when a judge previously sued the individual members of the commission in circuit court, and a circuit court judge attempted to exercise jurisdiction over the commission, this Court ordered the case transferred to **this** Court, pursuant to Article V, section 2,

Florida Constitution. See In re Code of Judicial Conduct, (Canons 1, 2 and 7(A)(1)(b)), 603 So. 2d 494 (Fla. 1992).

9. A "remand" sends a cause back to the same court out of which it came, for trial or some other action. Black's Law Dictionary (7th ed. 1999). The present action did **not** arise in circuit court, but before the Commission and thus the "motion to remand" is inappropriate. It can only serve to delay these proceedings. If, for example, Judge Schaeffer unsealed the grand jury testimony, will the FJQC have to await the state attorney's appeal to use the materials? Conversely, if Judge Schaeffer denied the motion to unseal, where would the Commission be required to apply for relief? Where would any appeal be filed, in the Second District or here? Moreover, how long would the parties and the public be forced to wait? A "remand" is likewise unnecessary. Judge Schaeffer, the judge who presided over the grand jury, has already stated publicly that she thinks the Constitution authorizes the FJQC to use the grand jury testimony in these proceedings. (App. "B").

10. At the present time, three separate branches of government have or are in the process of conducting inquiries into Judge Bonanno's conduct. The executive branch convened a grand jury, which issued a report but did **not** indict the judge for lying. By constitutional provision, both the Commission and the House of Representatives are supposed to have access to grand jury

testimony. Fla. Const. art V, §12(a)(5). However, access is meaningless without use and §905.27, Fla. Stats. appears to criminalize the testimony's use. Indeed, there is a sealed court order precluding the release of that testimony by the FJQC to anyone, while simultaneously the speaker of the house has requested all of the files in the FJQC's possession. (App. "C"). This has created a clear conflict between separate but co-equal branches of government. The State Attorney who presided over the grand jury is the only impediment to release of the grand jury testimony which can then be used by **all** concerned.

11. Contrary to suggestion, the FJQC's motion for release is **not** a matter requiring evidentiary proceedings. (Motion pp. 2-3). This is an issue of **law** involving an ostensible conflict between the Florida Constitution and a statute. FJQC submits that the former must trump the latter, particularly in the cause of the administration of justice.

12. The State Attorney cites five ostensible legal reasons supporting grand jury secrecy. See Motion p. 3, citing Grand Jury Fall Term, A.D. 1991 v. City of Petersburg, Florida, 624 So. 2d 291 (Fla. 2d DCA 1993). Four of those reasons cannot be implicated in these proceedings. It is unnecessary to protect the grand jurors, since each of them signed the grand jury report and their names are already public information. Judge Bonanno was **not** indicted, so there can be no question of preventing his "escape before arrest"

or "witness tampering" at a criminal trial "before indictment." Secrecy, likewise, cannot shield Judge Bonanno's reputation, since the grand jury's report constitutes a scathing denouncement of the judge, and the State Attorney has touted this report as the definitive word on Judge Bonanno's conduct. That leaves only **one** arguably legitimate reason - to promote the total freedom of disclosure to the grand jury. FJQC submits that this reason holds no water in the face of a published grand jury report, which presumably was based on the underlying evidence.

13. The FJQC has three major objectives here: (1) to maintain public confidence in these proceedings; (2) to ensure that the proceedings are fair to all concerned, **including** Judge Bonanno; and (3) to conclude them as quickly as possible, in the public eye, so that evidence - not rampant speculation, determines this judge's fate. **If** Judge Bonanno, in fact, lied to the grand jury, there is no question that a public reprimand would be too lenient. However, what should be patently clear is that this Commission could not charge Judge Bonanno with lying to the grand jury without the use of the grand jury testimony, and not only Judge Bonanno's testimony, but all of the testimony which led to the grand jury's conclusions.

14. Here, the grand jury has called for Judge Bonanno's removal based on "conflicting evidence" ostensibly given in the grand jury proceedings. Unless the grand jury testimony is

unsealed, FJQC and this Court cannot determine whether and, as to what matters, Judge Bonanno gave conflicting testimony, and Judge Bonanno cannot defend himself against such claim. In order to maintain public confidence in the judiciary, FJQC submits that this Court has exclusive jurisdiction to review the Commission's Report. The evidence which has been withheld is obviously important to that determination.

WHEREFORE, for all of the foregoing reasons, it is respectfully submitted that the "motion for remand" should be denied, and the grand jury testimony should be released.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this ____ day of October, 2001 to:

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